

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PEGGY H. LEWIS and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Baton Rouge, La.

*Docket No. 97-566; Submitted on the Record;
Issued October 23, 1998*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has established that her condition on and after December 31, 1989 was causally related to her accepted emotional condition or other factors of her federal employment.

On November 18, 1994 appellant, then a 31-year-old maintenance control clerk, filed a claim for menorrhagia requiring an emergency October 28, 1994 dilation and curettage, anemia, headache, weakness, shortness of breath, depression and stomach ulcers due to alleged sexual harassment by Mr. Larry Hamilton, an injury compensation specialist advising her regarding her left elbow tendinitis, carpal tunnel syndrome and a wrist ganglion.¹ Appellant alleged that she became "depressed and stressed out from past memories" when Mr. Hamilton returned to the employing establishment on October 11, 1994 after a disciplinary suspension due to his sexual harassment of appellant.² Appellant noted that she experienced identical symptoms beginning in February 1988 due to sexual harassment at work by Mr. Hamilton.³

In a July 15, 1988 report, Dr. Francis H. Henderson, an attending Board-certified obstetrician and gynecologist, noted appellant's six-month history of intermittent menorrhagia, with hormone injections instituted on April 8, 1988 and emergency dilation and curettage on

¹ The record indicates that the Office of Workers' Compensation Programs accepted that appellant sustained an upper extremity condition in the performance of duty. Claims concerning the upper extremity conditions are not before the Board on the present appeal.

² In an April 15, 1994 letter, appellant also alleged that Mr. David Roloff and Mr. Bill Roberts, employing establishment supervisors, also harassed her, and that the employing establishment did not fully comply with an Equal Employment Opportunity Commission (EEOC) order.

³ Appellant submitted May 1994 letters from her husband, pastor, a friend and a co-worker describing appellant's anxiety and depression beginning in 1986 which appellant attributed to sexual harassment by Mr. Hamilton.

April 14, 1988. Dr. Henderson opined that work stress could be a factor in causing appellant's abnormal bleeding, as "emotional stress can greatly influence menstrual regulation."⁴

In an April 18, 1994 decision, the EEOC found that appellant had established a *prima facie* case of sexual harassment by Mr. Hamilton sufficiently severe and pervasive to cause a hostile work environment.⁵ The EEOC further found that the employing establishment failed to accommodate an occupationally-related wrist condition from March to October 1988. The EEOC ordered that the employing establishment conduct training and post notices regarding prevention of sexual harassment, restore annual leave used from May 16 to June 3, 1988 and sick leave from April 4 to May 13, June 6 to July 28, 1988, reimburse appellant for any wage loss between March 10 and October 18, 1988 and pay compensatory damages for failing to accommodate her disability. Final compliance was due on July 21, 1994.

The record indicates that from July 25 to October 10, 1994, the employing establishment detailed Mr. Hamilton to a different post office. On September 14, 1994 the employing establishment modified a proposed reduction in grade⁶ to a suspension from September 24 to October 7, 1994, with a return to duty on October 10, 1994 at the employing establishment in his regular position.

In an October 18, 1994 letter, appellant noted Mr. Hamilton's return to the employing establishment and demanded his removal, as working in the same post office as Mr. Hamilton caused a recurrence of her mental and physical symptoms.⁷

In a December 1, 1994 report, Dr. Henderson noted an onset of abnormal uterine bleeding on September 21, 1994, requiring dilation and curettage and transfusions for anemia in October 1994. In an August 11, 1995 note, Dr. Henderson held appellant off work from September 19, 1994 to August 18, 1995.

⁴ Dr. Henderson submitted chart notes dated May 12, 1994 to December 8, 1995 finding abnormal uterine bleeding requiring hormone injections, and severe anemia requiring a November 1994 transfusion.

⁵ The EEOC noted that Mr. Hamilton repeatedly asked appellant for dates, "asked her to sleep with him, telephoned her" more than 100 times from 1985 to 1988 and came to appellant's home uninvited 7 times between 1985 and 1988. The EEOC also found that Mr. Hamilton physically assaulted appellant in December 1987 at the employing establishment, and in March 1988 asked her to lunch. The EEOC noted that much of appellant's account was corroborated by witness statements.

⁶ In a July 20, 1994 notice, the employing establishment advised Mr. Hamilton that pursuant to the April 14, 1994 EEOC decision, it proposed to reduce him from a Labor Relations Specialist at EAS 19 to a Supervisor of Customer Service at EAS 16, due to "unacceptable work performance ... sexual harassment in the workplace."

⁷ In a November 21, 1994 letter, the employing establishment noted that appellant had been off work since before November 14, 1992 due to a "prior injury claim." In a November 23, 1994 letter, the employing establishment asserted that it had complied with 7 of the 9 EEOC ordered mandates and had determined appropriate disciplinary action against Mr. Hamilton. In a December 8, 1994 letter to appellant, the employing establishment asserted that it would comply with the remaining 2 mandates relating to restoration of back pay when certain payroll issues were resolved. The employing establishment submitted documents relating to its compliance with the EEOC order including reinstatement of 196 hours annual leave and 539.89 hours of sick leave.

In a November 14, 1995 report, Dr. F.A. Silva, an attending psychiatrist, indicated that appellant was unable to perform all of her job duties from September 13, 1995 onward due to “generalized anxiety disorder and possible post-traumatic stress syndrome related to work stress aggravated by having to work at the same location” as Mr. Hamilton who “sexually harassed her, as well as working at a position, for which she states her orthopedist did not approve.” Dr. Silva stated that appellant’s onset of symptoms occurred in August 1995. He opined that appellant could “return to full-time work if she [did] not have to work at the same facility” with Mr. Hamilton and within orthopedic restrictions. Dr. Silva prescribed counseling and medication.⁸

The Office denied appellant’s claim by a March 6, 1995 decision, whereupon appellant requested an oral hearing, held February 14, 1996. By decision dated May 15, 1996 and finalized May 17, 1996, the Office set aside the March 6, 1995 decision and directed further development, including referral to a Board-certified psychiatrist.

Dr. Henderson released appellant to work as of August 21, 1995. The record indicates that appellant returned to work on August 28, 1995 and stopped work on September 13, 1995.⁹

An August 13, 1996 statement of accepted facts notes the Office accepted the EEOC’s finding that Mr. Hamilton sexually harassed appellant from 1985 to 1988. The Office accepted as factual, but not compensable, appellant’s frustration over what she felt was insufficient disciplinary action against Mr. Hamilton. The Office noted that appellant had returned to work on October 24, 1988 and missed little or no time from work due to the harassment until November 8, 1994 when she filed her occupational disease claim.

In an August 27, 1996 report, Dr. Louis Cenac, a Board-certified psychiatrist and second opinion physician, reviewed the medical record and noted appellant’s accounts of insomnia, crying spells, hostile thoughts toward Mr. Hamilton, difficulty concentrating, loss of interest in activities. Dr. Cenac diagnosed “factitious disorder with combined psychological and physical signs and symptoms,” and “histrionic personality.” He opined that appellant’s current condition was not work related as she was able to return to work after the harassment ceased in 1988.¹⁰

In a September 11, 1996 report, Dr. Cenac stated that based on appellant’s self-report, “she would have been symptom free from the stressor caused by Larry Hamilton by 1990.” Dr. Cenac noted that appellant had a long history of histrionic personality disorder and was, therefore, “uncomfortable in situations where [she was] not the center of attention.... [Appellant’s] ‘recurrence of symptoms’ occurred when [Mr.] Hamilton was promoted ... [which meant] that more attention [was] centered upon him than upon [appellant].”

⁸ In a November 9, 1995 report, Dr. Silva stated that appellant was “suffering from stress associated from work” at the employing establishment, with diagnoses of generalized anxiety disorder and possible post-traumatic stress syndrome. He recommended counseling and medication.

⁹ The record indicates that appellant did not return to work as of August 12, 1996.

¹⁰ In a September 4, 1996 letter, the Office requested that Dr. Cenac comment on appellant’s mental state from 1985 to 1988, and when and if her psychologic condition ceased.

In a September 18, 1996 report, Dr. Cenac diagnosed “psychological factors affecting medical condition,” as the stress of “being molested by [Mr.] Hamilton ... cause[d] an aggravation of ... excess uterine bleeding.” Dr. Cenac stated that appellant’s psychiatric disorder “caused by the molestation by [Mr.] Hamilton was substantially resolved before 1990. [Appellant] suffered psychological ... and physical pain from this disorder. [Appellant] may have suffered some lost work time.... Any disability referable to the condition would have ceased by 1990.” Dr. Cenac opined that when Mr. Hamilton was promoted, appellant developed a “factitious disorder,” which he characterized as a nondisabling, “self-induced state.”

The Office accepted on September 19, 1996 that appellant sustained psychological factor affecting medical condition secondary to sexual harassment, ceasing no later than December 31, 1989, based on Dr. Cenac’s reports.

In a September 30, 1996 report, appellant requested reconsideration, alleging that her depression, post-traumatic stress disorder and menorrhagia persisted after December 31, 1989. She submitted additional evidence.¹¹

In a September 24, 1996 report, Dr. Silva noted treating appellant beginning on September 13, 1995, when she was referred for emergency treatment due to “stress symptoms related to her return to work” at the employing establishment. He diagnosed post-traumatic stress disorder and major depression, single episode. Dr. Silva noted that appellant’s symptoms of restricted affect, feelings of hopelessness, insomnia, irritability and outbursts of anger, difficulty concentrating, hypervigilance, disinterest in significant activities such as church and work, “feelings of estrangement,” and “efforts to avoid activities that arouse recollections of the trauma” were characteristic of post-traumatic stress disorder. He explained that appellant had an “extreme physiological reaction upon being exposed to the perpetrator as evidenced by trembling and migraines, which create stomach pain, vomiting and increased vaginal bleeding.” Dr. Silva noted symptoms of major depression, including depressed mood, disinterest in activities, fatigue, weight gain, feelings of worthlessness and recurrent suicidal thoughts requiring hospitalization on September 21, 1996. He opined that appellant’s condition “arises from incidents of sexual harassment on the job that occurred between 1985 and 1988.” Dr. Silva explained that appellant’s post-traumatic stress disorder “intensified when she had to work in the same building as the perpetrator [Mr. Hamilton] and having to come in contact with him. The physiological and emotional responses that [appellant] experiences as a result of her having to work at the same

¹¹ Appellant also submitted April 27 and August 30, 1995 letters she wrote to the employing establishment. In an April 27, 1995 letter, appellant accepted an offered modified-duty position. She alleged that she accepted the offer under duress, as an employing establishment official told her that she would lose her compensation if she refused the offer. In August 30, 1995 letters, appellant requested a transfer to a different post office as she alleged that it was a violation of the EEOC order for her to work in the same post office as Mr. Hamilton. She also noted difficulties in trying to return to work on August 23 and 29, 1995 as appropriate administrative clearances were not obtained.

location as the perpetrator rendered her unable to function on the job.” He noted that appellant required continued counseling and medication.¹²

By decision dated October 22, 1996, the Office denied modification on the grounds that the evidence submitted was insufficient to warrant modification. The Office noted that Dr. Silva’s September 24, 1996 report was insufficiently rationalized to establish a causal relationship between appellant’s condition on and after December 31, 1989 and accepted work factors.

The Board finds that the case is not in posture for a decision due to a conflict of medical opinion between Dr. Cenac, for the government and Dr. Silva, for appellant.

The issue in this case is whether appellant’s physical and psychologic symptoms on and after December 31, 1989 are causally related to sexual harassment by Mr. Hamilton from 1985 to 1988, the accepted psychiatric condition, or other factors of her employment. Appellant submitted reports from Dr. Silva, an attending psychiatrist, supporting causal relationship.

In a November 14, 1995 report, Dr. Silva indicated that appellant was unable to work from September 13, 1995 onward due to “generalized anxiety disorder and possible post-traumatic stress syndrome related to work stress aggravated by having to work at the same location” as Mr. Hamilton who “sexually harassed her.” In a September 24, 1996 report, Dr. Silva newly diagnosed major depression, single episode and explained in detail how her symptoms were characteristic of the diagnosed depression and post-traumatic stress disorder. He opined that appellant’s condition arose from the accepted sexual harassment. He noted that appellant required continued counseling and medication.

In contrast to Dr. Silva’s opinion, Dr. Cenac, a Board-certified psychiatrist and second opinion physician, submitted reports negating a causal relationship between appellant’s condition on and after December 31, 1989 and factors of her federal employment. In an August 27, 1996 report, Dr. Cenac, noted appellant’s symptoms of insomnia, crying spells, hostile thoughts toward Mr. Hamilton, difficulty concentrating and loss of interest in activities. The Board notes that these symptoms are very substantially similar to those observed by Dr. Silva and formed the basis of Dr. Silva’s diagnoses of generalized anxiety disorder and possible post-traumatic stress syndrome. However, Dr. Cenac diagnosed a factitious disorder and histrionic personality which he opined were not work related.

In contrast to Dr. Silva’s opinion that appellant’s psychiatric condition on and after December 31, 1989 was causally related to employment factors, Dr. Cenac stated in a September 11, 1996 report that appellant’s symptoms due to the sexual harassment would have ceased by 1990. In a September 18, 1996 report, Dr. Cenac newly diagnosed “psychological factors affecting medical condition ... substantially resolved before 1990.... Any disability referable to the condition would have ceased by 1990.”

¹² In an October 4, 1996 letter, the Office advised appellant of the procedures for claiming wage loss, and advising her to follow the appeal rights enclosed with the September 19, 1996 decision if she disagreed with that decision.

The Board notes that Dr. Cenac, in his September 11 and 18, 1996 reports, opined that appellant's recrudescence of symptoms was a histrionic response due to Mr. Hamilton's "promotion" deflecting attention from appellant. Dr. Cenac was in error, as there is no indication that Mr. Hamilton was promoted. Rather, appellant was reacting to Mr. Hamilton's reinstatement in his usual position after his two-week disciplinary suspension. Thus, Dr. Cenac's opinion is partially based on an inaccurate factual account.

The Federal Employees' Compensation Act, at 5 U.S.C. § 8123(a), in pertinent part, provides: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."

Consequently, the case must be remanded so that the Office may refer appellant, together with the case record and a statement of accepted facts, to an appropriate Board-certified specialist for an examination and a rationalized medical opinion to resolve the medical conflict regarding whether appellant's psychiatric and physical conditions on and after December 31, 1989 were caused or aggravated by the accepted sexual harassment from 1985 to 1988 or other employment factors. Following this and other such development the Office deems necessary, the Office shall issue an appropriate decision in the case.

The decisions of the Office of Workers' Compensation Programs dated October 22 and September 19, 1996 are hereby set aside and the case remanded for further development consistent with this decision and order.

Dated, Washington, D.C.
October 23, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member